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Supreme Court, U.S.
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Supreme Court of the United States

SABRINA A. SKELDON,

PETITIONER,

v.

JOHN ASHCROFT, Attorney General,
United States Department of Justice,

RESPONDENT.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether alleged lack of candor, immaterial to the case presented to the jury, is a special circumstance within the meaning of *Newman v. Piggie Park Enterprises, Inc.*, 390 U.S. 400, 402-03 (1968), and its progeny, and can, therefore, support the denial of any fee award to a prevailing plaintiff, who would ordinarily receive such an award pursuant to 42 U.S.C. §§ 2000a-3(b) & 2000e-5(k).

2. Whether a district court should be required to support with specific findings, susceptible to meaningful appellate review, its decision to deny outright, because of the presence of "special circumstances," an award of attorney's fees to a prevailing party within the meaning of 42 U.S.C. § 2000e-5(k).

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LIST OF PARTIES

The following is a list of all parties to the proceedings in the Court below, as required by Rule 24.1(b) and Rule 29.1 of the Rules of the Supreme Court of the United States.

a. Sabrina A. Skeldon, Plaintiff-Appellant;

b. John Ashcroft, Attorney General of the Department of Justice, Defendant-Appellee;

c. Richard L. Swick, Attorney for Plaintiff-Appellant; and

d. Marleigh D. Dover, Charles Wylie Scarborough, Department of Justice, Attorneys for Defendant-Appellee.

OPINIONS BELOW

The Decision of the United States Court of Appeals for the Fifth Circuit, *Skeldon v. Ashcroft*, 110 Fed. Appx. 415, 2004 WL 2294571 (5th Cir. (La.)), is unpublished and is reproduced in the attached Appendix ("App.") at 1a. The Memorandum and Order and Judgment of the United States District Court for the Western District of Louisiana, Civil Action No. 99-1177-LO, are unreported and are reproduced in the Appendix at 3a and 30a, respectively.

JURISDICTION

This Court has jurisdiction to review the *per curiam* decision of the United States Court of Appeals for the Fifth Circuit entered on October 8, 2004, to deny petitioner's request for attorney's fees, by a Writ of Certiorari under 28 U.S.C. § 1254(1). The Fifth Circuit denied Petitioner's Petition for Rehearing and Suggestion for Hearing En Banc, on December 21, 2004.

STATUTORY PROVISIONS INVOLVED

The full text of each statute below is supplied in the Appendix.

Civil Rights Act of 1964, as amended.

42 U.S.C. § 2000e-2(a):

It shall be an unlawful employment practice for an employer --

(1) to ... discriminate against any individual with respect to his

compensation, terms, conditions or privileges of employment, because of such individual's race, color, [or] sex ...

• • •

(k) Attorney's fee; liability of Commission and United States for costs

In any action or proceeding under this subchapter the court, in its discretion, may allow the prevailing party, other than the Commission or the United States, a reasonable attorney's fee (including expert fees) as part of the costs, and the Commission and the United States shall be liable for costs the same as a private person.

42 U.S.C.A. § 2000e-16

(a) Discriminatory practices prohibited; employees or applicants for employment subject to coverage

All personnel actions affecting employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) in military departments as defined in section 102 of Title 5, in executive agencies as defined in section 105 of Title 5 (including employees and applicants for employment who are paid from nonappropriated funds), in the United States Postal Service and the Postal Rate Commission, in those units of the Government of the District of Columbia having positions in the competitive service, and in those units of the judicial branch of the Federal Government having positions in the competitive service, in the Smithsonian Institution, and in the Government Printing Office, the Government Accountability Office, and the Library of Congress shall be made free from any discrimination based on race, color, religion, sex, or national origin.

STATEMENT OF THE CASE

Procedural History

On July 1, 1999, Petitioner Sabrina Skeldon filed her Complaint against the Defendant Department of Justice ("DOJ"), stating several employment discrimination causes of action under Title VII of the Civil Rights Act of 1964, as amended, seeking damages and equitable relief, and requesting a jury trial. After the DOJ filed its answer on August 30, 1999, extensive pretrial litigation commenced, including numerous discovery requests and depositions and several motions to compel and for protective orders. The jury trial commenced on June 5 and concluded on June 22, 2001 with a jury verdict for Skeldon on her Title VII hostile environment cause of action, with $45,000 in non-economic damages awarded. The jury found for the defense on the retaliation claim.

On December 2, 2002, the district court conducted a hearing on Skeldon's petition for an award of equitable relief under Title VII, including attorney's fees and costs and on Defendant's motions for a new trial and for discovery sanctions. On March 17, 2003, the district court issued its judgment and filed a Memorandum and Order, which, among other things, granted defendant's motion for sanctions and denied plaintiff's petition for attorney's fees. On May 2, 2003, Skeldon noticed her appeal, as did the DOJ on May 15, 2003.

On October 8, 2004, the United States Court of Appeals for the Fifth Circuit affirmed the district court's decision. On December 21, 2004, the court below denied *en banc* review.

Relevant Facts

Ms. Skeldon, a 1984 graduate from the University of Texas School of Law, was employed in 1995 as an Assistant United States Attorney (AUSA) for the Western District of Louisiana, and was assigned to the Civil Division in Shreveport. She was the only female attorney in the Shreveport office, and she reported to a male supervisor, John Broadwell.

From 1995 to 2000 as an AUSA, Ms. Skeldon investigated, filed, and litigated civil cases mostly aimed to recover damages for various kinds of fraud against the federal government. From the beginning of her tenure, however, she experienced disparate treatment and hostility emanating primarily from her supervisor, Mr. Broadwell.

Mr. Broadwell, who had taken no part in hiring her, believed that Ms. Skeldon was an affirmative action hire, and he was suspicious of her from the start. Within the first few months of starting the job, Mr. Broadwell began complaining to his supervisors and pressing to have Ms. Skeldon removed.

Mr. Broadwell imposed a number of restrictions and conditions on her work activities that he did not impose on other, male AUSAs, including: requiring that Ms. Skeldon submit every pleading and item of correspondence to him for review; limiting Ms. Skeldon's use of shared secretarial support services and thus imposing additional clerical duties upon her; keeping cumulative secret notes of any mistakes and negative observations that he saw or heard about Ms. Skeldon; and forwarding this information to his superiors.

Added to all of these factors was the formal proposal to fire Ms. Skeldon for professional misconduct that remained pending continuously from December 17, 1997 through April, 2000, even

after the DOJ Office of Professional Responsibility had cleared her of the alleged firing-offense misconduct. Mr. Broadwell's conduct was based on Ms. Skeldon's sex, as evidenced by his using vulgar profanity to describe professional women, and by the fact that he did not treat male AUSAs in a similarly hostile manner.

District Court and Fifth Circuit Court Holdings At Issue

The district court denied attorney's fees on three grounds: (1) the requested fee amount was so "outrageously excessive that it shocked the conscience of the Court[;]" (2) "plaintiff's false testimony and actions in the course of discovery warrant the sanction of a denial[;]" and (3) "Plaintiff [is] no more entitled to an award of legal fees than Defendant" because "on the only two claims submitted for jury verdict, Plaintiff prevailed on one and the Government prevailed on the other."

In a *per curiam* opinion, the United States Court of Appeals for the Fifth Circuit concluded that "Skeldon has failed to show that the district court abused its discretion in denying her motion for attorney's fees."

I. Courts of Appeals Disagree on the Significance of Immaterial Lack of Candor on the Part of Plaintiff in the Consideration of Special Circumstances Necessary to Bar an Award of Attorney's Fees.

In contrast to the Fifth Circuit and the district court below, in *Price v. Pelka*, 690 F.2d 98 (6th Cir. 1982), the Sixth Circuit has explicitly rejected immaterial perjury as the basis for a special circumstance necessary to bar the ordinary award of attorney's fees. noting that "[t]he district court's order, if allowed to stand, would frustrate the policy of promoting private enforcement of the [civil

rights laws,]" *id.* at 101, and that "[a]wards of attorney fees are an integral part of the remedies necessary to obtain compliance with the civil rights laws." *Id.* at 101-02.

The Sixth Circuit was especially concerned about the ability of civil rights plaintiffs to obtain competent counsel if special circumstances were given a broad construction:

> Competent counsel will be reluctant to represent potential plaintiffs if courts withhold attorney fee awards even though the plaintiffs prevail on the merits. This is especially true in cases like this one, where Ms. Price's perjury had absolutely no relevance to the question of whether the Pelkas violated Ms. Price's civil rights. Moreover, Ms. Price's attorney did not contribute to her perjury. Thus, allowing the district court to vacate the attorney's fee award under these circumstances would effectively chill a victim of discrimination's ability to attract competent counsel.

Id. at 102. The Sixth Circuit recently reaffirmed this decision in *Wikol ex rel. Wikol v. Birmingham Public Schools Bd. of Educ.*, 360 F.3d 604 (6th Cir. 2004).

II. Awards of Attorney's Fees to Prevailing Parties are Highly Favored and Constitute an Essential Aspect of This Country's Commitment to Civil Rights Protection.

The "primary objective" of Title VII is "to achieve equality of employment opportunities." *Albermarle Paper Co. v. Moody*, 422 U.S. 405, 418 (1975) (internal citation omitted). "It is also the purpose of Title VII to make persons whole for injuries suffered on account of unlawful employment discrimination." *Id.* Thus, while

civil rights plaintiffs desire to recoup their own damages, they also serve the primary objective of Title VII by vindicating important civil and constitutional rights that benefit the whole nation. *Newman*, 390 U.S. at 401; *see also Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 418 (1978) ("[T]he plaintiff is the chosen instrument of Congress to vindicate" national civil rights policy.) As this Court has noted, "Congress has cast the Title VII plaintiff in the role of 'a private attorney general.'" *New York Gaslight Club, Inc. v. Carey*, 447 U.S. 54, 63 (1980).

Furthermore, "it is clear that one of Congress' primary purposes in enacting [the fee shifting provisions] was to 'make it easier for a plaintiff of limited means to bring a meritorious suit.'" 447 U.S. at 63, *quoting Christiansburg Garment Co.*, 434 U.S. at 420 (quoting 110 Cong. Rec. 12724 (1964) (remarks of Sen. Humphrey); *accord Hensley v. Eckerhart*, 461 U.S. 424, 429 (1983) (quoting H.R.Rep. No. 94-1558, p. 1 (1976) ("The purpose of [attorney fee shifting statues] is to ensure 'effective access to the judicial process' for persons with civil rights grievances."). "If private citizens are to be able to assert their civil rights, and if those who violate the Nation's fundamental laws are not to proceed with impunity, then citizens must have the opportunity to recover what it costs them to vindicate these rights in court." S. Rep. No. 94-1011, at 6 (1976), reprinted in 1978 U.S.C.C.A.N. 5910 (quoted in *City of Riverside v. Rivera*, 477 U.S. 561, 577-578 (1986)).

In fact, Congress recognized that private litigation was necessary to enforce the Civil Rights Act. *Newman*, 390 U.S. at 401-02. "[A]warding counsel fees to prevailing plaintiffs is particularly important and necessary if Federal civil and constitutional rights are to be adequately protected." H.Rep. No. 94-1558, at 9, reprinted at 1978 U.S.C.A.A.N. 5908 (*quoted in City of Riverside*, 477 U.S. at 577); *see also* 122 Cong. Rec. at 33314 (remarks of Sen. Kennedy)

("[C]ivil rights cases - unlike tort or antitrust cases - do not provide the prevailing plaintiff with a large recovery from which he can pay his lawyer.")

The importance of the issue before the Court cannot be gainsaid. As Congress has noted, "[n]ot to award counsel fees in cases such as this would be tantamount to repealing the Act itself by frustrating its basic purpose." S.Rep. No. 94-1011, p. 4 (1976), U.S.Code Cong. & Admin.News 1976, p. 5910 (quoting *Hall v. Cole*, 412 U.S. 1 (1973)). Indeed, this Court has expressly held that "a prevailing party should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust." *Hensley v. Eckerhart*, 461 U.S. 424, 429 (1983) (citations and internal quotation marks omitted); *Newman*, 390 U.S. 400, 402-403 (1968). Applying this principle, most courts of appeals have made clear that the range of cases where special circumstances can be found is exceedingly narrow. *See, e.g., Doe v. Board of Educ. of Baltimore County,* 165 F.3d 260, 264 (4th Cir.1998) (holding that the "'special circumstances' exception is very 'narrowly limited'" and that "[o]nly on rare occasions does a case present such circumstances"); *Scham v. District Courts Trying Criminal Cases*, 148 F.3d 554, 557 (5th Cir 1998); *Jenkins by Jenkins v. Missouri*, 127 F.3d 709, 716 (8th Cir. 1997); *Phelps v. Hamilton*, 120 F.3d 1126, 1129 (10th Cir. 1997); *Martin v. Heckler*, 773 F.2d 1145, 1150 (11th Cir. 1985). By granting review, this Court would reaffirm that courts below retain narrow and constrained discretion to completely deny awards of attorney's fees.

III. Alleged Lack of Candor, Immaterial To The Case, Should Not Be Deemed a Special Circumstance Which Would Make an Award of Attorney's Fees Unjust.

Prevailing civil rights plaintiffs are entitled to an award of

attorney's fees absent special circumstances. *Hensley*, 461 U.S. at 429. Other than the decisions below in Ms. Skeldon's case, no cases found to date suggest that a judge's post-trial credibility determination about some of a plaintiff's testimony constitutes such a special circumstance. In fact, as noted above, the only circuit court to discuss perjury in the context of the special circumstances inquiry, explicitly rejects that conclusion and in words that could describe this case, indicates that the "[defendants'] liability ... was not affected in any way by [the plaintiff's] perjury" and that "nothing in the record indicates that Ms. Price's attorney contributed to her perjury." *Price*, 690 F.2d at 101.

In the instant case, however, the district court did not identify the allegedly perjurious statements, and it did not determine whether the perjury was material to the matter before it. And, it made no effort to ascertain counsel's involvement in the alleged perjury. Not only did the district court fail to cite this Court's standard in *Hensley*, it failed to provide any indication that the alleged perjury "would render . . . a [fee] award unjust." *Hensley*, 461 U.S. at 429.

IV. In the Alternative, this Court Should Grant Certiorari and Summarily Reverse Pursuant to Rule 16.1 in Light of the Complete Absence of Adequate Findings Necessary to Ensure Meaningful Appellate Review.

The district court failed to support its conclusions with any findings or examination of the record and thereby contravened this Court's instruction in *Hensley*, 461 U.S. 424 (1983), that the "district court ... provide a concise but clear explanation of its reasons for the fee award." *Id.* at 437. In light of this requirement, the courts of appeals have reminded the district courts of their obligations to provide adequate reasons when assessing fee petitions. *See, e.g., Mammano v. Pittston Co.*, 792 F.2d 1242, 1245 (4th Cir.1986);

Scham v. District Courts Trying Criminal Cases, 148 F.3d 554, 559 (5th Cir. 1998) ("To avoid the risk of remand the district court should explain with a reasonable degree of specificity the findings and reasons upon which an award of attorneys' fees--or the denial of such an award--is based.") (citations and internal quotation marks omitted).

Indeed, the district court offered nothing to connect its bare conclusions with the facts of the case before it. When stating that the requested fee amount "shocked the conscience," the district court did not mention the amount requested and did not ascertain whether such fees were justified due to the government's litigation effort. *See Graham v. Sauk Prarie Police Comm'n*, 915 F.2d 1085, 1109 (7th Cir. 1990) ("As the district court aptly noted, the defendants have conceded nothing at any point in this litigation; their defense was resolute, if not intransigent at times. A defendant cannot litigate tenaciously and then be heard to complain about the time necessarily spent by the plaintiff in response." (*citing City of Riverside*, 477 U.S. 561, 580 n.11) (1986)). In this vein, the district court did not point to a single example of Skeldon's counsel failing to exercise billing judgment.

In sanctioning counsel for allegedly dishonest conduct on the part of Skeldon, the district court did not attempt to determine whether the alleged perjury was material. Nor did the court consider whether the statements were intentional perjury or merely a different understanding of events or whether Skeldon's memory and perception of events was merely different from the government's characterization of those same events. In fact, the district court did not even identify the statements that it deemed dishonest.

Even more egregiously, the district court characterized Skeldon as a "partially prevailing party" and compared, without reference to the relevant standards, the plaintiff's and defendant's

victories at trial. There is no such thing as a "partially prevailing party" under federal civil rights law. The Supreme Court has held that a "prevailing party" is "one who has succeeded on any significant claim affording it some of the relief sought, either pendente lite or at the conclusion of the litigation." *Texas State Teachers Ass'n v. Garland Independent Sch. Dist.*, 489 U.S. 782, 791 (1989). Once the party is deemed "prevailing," then the degree of the prevailing party's success affects the decision about "what fee is 'reasonable.'" *Hensley*, 461 U.S. 424, 433 (1983); *see Texas State Teachers Ass'n.*, 489 U.S. at 791-92 (success on any issue is sufficient to entitle a prevailing party to fees). The district court made no attempt to determine the degree of success or whether the various claims rested on a common nucleus of operative fact. *See Hernandez v. Hill Country Telephone Co-op, Inc.*, 849 F.2d 139, 144 (5th Cir. 1988) ("The *Hensley* court teaches that claims for relief that involve a common core of facts, or derive from related legal theories, cannot be viewed as a series of discrete claims.") (discussing *Hensley*).

Moreover, as noted above, the district court misunderstands the differing burdens for the prevailing plaintiff and the prevailing defendant. In *Christiansburg Garment Co. v. Equal Employment Opportunity Commission*, 434 U.S. 412 (1978), the Supreme Court held under Title VII that a prevailing plaintiff is entitled to "attorney's fees in all but special circumstances," but that a prevailing defendant may be awarded attorney's fees only if the court finds that plaintiff's claim to be "frivolous, unreasonable or groundless" or made "in bad faith." *Id.* at 417, 422. Plainly put, it is the ordinary case where the prevailing plaintiff receives an award of attorney's fees and the extraordinary case where the defendant does so.

The district court did not attempt to support any of these bases with any more than naked conclusions. As such, the court should summarily reverse and remand for more adequate findings.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted and the decision below reversed and remanded.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing petition for a writ of certiorari was served on respondents by mailing a copy thereof, first-class postage prepaid, to their counsel of record, Marleigh D. Dover, Charles Wylie Scarborough, U.S. Department of Justice, Civil Division - Appellate Staff, 601 D Street, N.W., Suite 9611, Washington, D.C. 20530-0001, and to the Solicitor General of the United States, Room 5614, Department of Justice, 950 Pennsylvania Ave., N.W., Washington, D.C. 20530-0001 on March 21, 2005.

_____

Michael J. Church

UNITED STATES COURT OF APPEALS,
For the Fifth Circuit
Sabrina A. SKELDON, Plaintiff-Appellant-Cross-Appellee,
v.
John ASHCROFT, Defendant-Appellee-Cross-Appellant.
No. 03-30462.

Decided Oct. 8, 2004.

David Harris Shapiro, Swick & Shapiro, Washington, DC, for Plaintiff-Appellant-Cross-Appellee.

Marleigh D. Dover, Charles Wylie Scarborough, Washington, DC, for Defendant-Appellee-Cross-Appellant.

Appeal from the United States District Court for the Western District of Louisiana, (99-CV-1177).

Before BENAVIDES, DENNIS, and CLEMENT, Circuit Judges.

PER CURIAM: [FN*]

> FN* Pursuant to 5TH CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

**1 Sabrina Skeldon appeals that portion of the district court's final judgment that denied her motion for attorney's fees, costs, and other equitable relief despite the jury's verdict in her favor on her hostile work environment claim. The Government appeals that portion of the district court's final judgment that denied the Government's Rule 50 motion for judgment as a matter of law as to Skeldon's hostile work

environment claim. We review Skeldon's challenge to the district court's post-verdict denial of her motion for attorney's costs, fees, and equitable relief for an abuse of discretion. Brady v. Fort Bend County, 145 F.3d 691, 716 (5th Cir.1998) (citations omitted). While our review of the district court's denial of the Government's Rule 50 motion for judgment as a matter of law is *de novo, see* Burge v. St. Tammany Parish, 336 F.3d 363, 368 (5th Cir.2003), we will only overturn a jury verdict when the evidence points "so strongly and overwhelmingly in favor of one party that the court believes that reasonable [jurors] could not arrive at any contrary conclusion." *Baltazor v. Holmes*, 162 F.3d 368, 373 (5th Cir.1998) (quoting *Boeing v. Shipman*, 411 F.2d 365, 374 (5th Cir.1969)(en banc)).

***416** After reviewing the record, we conclude that Skeldon has failed to show that the district court abused its discretion in denying her motion for attorney's fees, costs, and equitable relief. We also conclude that sufficient evidence exists to support the jury's verdict on Skeldon's hostile work environment claim. Accordingly, the district court's final judgment is AFFIRMED.

AFFIRMED.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
(Lafayette-Opelousas Division)

SABRINA A. SKELDON	*	
Plaintiff	*	
v.	*	C.A. No. 99-1177-LO
JOHN D. ASHCROFT, Attorney General of the United States	*	Judge Garbis (By Designation)
Defendant	*	

* * * * * * * * *

MEMORANDUM AND ORDER

The Court has before it:

A. Defendant's Motion for Judgment as a Matter of Law Or, Alternatively, for a Partial New Trial,

B. Plaintiff's Petition for an Award of Equitable Relief, and

C. Defendant's Renewed Motion for Sanctions.

and the materials submitted relating thereto. The Court has held a hearing and had the benefit of the arguments of counsel.

I. BACKGROUND[1]

Plaintiff Sabrina Skeldon (hereinafter "Plaintiff" or "Skeldon") is a female who graduated from the University of Texas School of Law in 1984. Plaintiff spent some ten years in private practice in Dallas, Texas.

In 1995, Skeldon was employed as an Assistant United States Attorney (hereinafter sometimes referred to as "AUSA") for the Western District of Louisiana (hereinafter "Western District" or "W.D.La."). Skeldon was assigned to the civil division office in Shreveport. While there were other female attorneys in the Civil Division, Skeldon was the only female attorney based in the Shreveport office.

Skeldon's employment experience in the Western Division was highly unsatisfactory for her and for the United States Attorney. Of course, the parties sharply disagree as to many details and, .most definitely, as to the allocation of fault. Nevertheless, to the extent that the parties herein could agree on anything, they would agree (or could not dispute) that Skeldon's tenure as an Assistant United States Attorney was marred by unhappiness on both sides. Furthermore, to the extent to which the Court must make finding of fact in regard to the instant motions, the Court finds that Skeldon was an Assistant United States Attorney of unexceptional abilities who caused severe problems for her employer. Skeldon may have been a somewhat competent lawyer, but was an unsatisfactory employee.

On December 17, 1997, Plaintiff filed an administrative

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[1] For a more extensive statement of the background of the case, see the Memorandum and Order issued April 25, 2001 with regard to Defendant's Motion for Summary Judgement.

complaint with the Equal Employment Opportunity Commission (hereinafter "EEOC"), alleging that she had been the subject of false allegations arising out of her involvement in a case on which she had worked, referred to as the "ICON Case". On February 21, 1998, Plaintiff filed a second administrative complaint with the EEOC alleging unlawful employment discrimination and retaliation for having complained of such discrimination to the Equal Employment Opportunity Staff of the Executive Office for the United States Attorney.

On July 1, 1999, having received no final decision on her administrative complaints, Plaintiff filed the instant lawsuit in the United States District Court for the Western District of Louisiana. Skeldon asserted the following claims:

1. Gender based discrimination by virtue of:
   a. Denial of merit-based pay raise
   b. Denial of special performance awards
   c. Non-selection to be Health Care Coordinator
2. Hostile work environment
3. Retaliation by virtue of
   a. De facto demotion
   b. A proposal for her termination

By Memorandum and order issued April 25, 2001, the Court granted Defendant summary judgment with reference to Skeldon's claims relating to merit-based pay raises, non-selection as Health Claims Coordinator, and retaliation based on the proposal for termination.

The case proceeded to trial on Skeldon's claims of

- Gender discrimination with regard to special performance awards,
- A hostile work environment, and
- Retaliatory de facto demotion.

During trial, the Court granted Defendant Judgment as a Matter Of Law (sometimes referred to herein as "JMOL") on Plaintiff's claim of gender discrimination with regard to special performance awards. The jury returned a verdict for Defendant rejecting the retaliation claim and for Plaintiff as to her hostile work environment claims, awarding $45,000 in compensatory damages.

By the instant motions

- Defendant seeks Judgment as a Matter of Law or a new trial as to the only claim on which Plaintiff prevailed at trial.

- Plaintiff seeks a variety of forms of equitable relief.

- Defendant seeks sanctions for Plaintiff's false testimony and actions in discovery with regard to her psychiatric history.

II. DEFENDANT'S MOTION FOR JMOL AND NEW TRIAL

Defendant again presents the issues raised in his Motion for Summary Judgment with respect to the only claim on which Plaintiff prevailed, the hostile work environment claim. Plaintiff restates her arguments made on summary judgment and further claims that Defendant waived the right to move for Judgment as a Matter of Law.

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The Court will address the matter of waiver and then the merits of the motion.

A. Waiver

1. Was There a Waiver?

Plaintiff contends that the Defendant waived his right to move for Judgment as a Matter of Law after the verdict because he did not renew his motion for JMOL at the close of the evidence.

The Court concludes that, to the extent that there was a failure to comply with the literal requirements of Rule 50(b), the purpose of the Rule was satisfied; and the Defendant's departure from the Rule would be excused. Compare Tamez v. City of San Antonio, 118 F.3d 1085, 1089-50 (5th Cir. 1957). Just two matters need be noted:

First, the following exchange between the Court and counsel on the record following jury instructions and out of the presence of the Jury:

> **THE COURT:**
>
> . . . I want to make sure everybody's record is protected.
>
> [Statement re jury charge objections]
>
> Secondly, with regard to the motions by the government if for judgment as a matter of law, from time to time I want it to be very clear with regard, these have been debated in

various conferences, off the record, et cetera. The motion to the extent it was granted was not acquiesced by the plaintiff, but the plaintiff vigorously opposed it.

In reliance upon me, the plaintiff did not have an opportunity to state the grounds for opposing the motion, and therefore is deemed to have raised whatever grounds the plaintiff wished to raise at the time the motion was made. So that similarly, with regard to all of the other evidence we did not go to the formality of remaking the government remaking the motions which it did, and the defendant reopposing the motions, but with regard to motions for judgment as a matter of law, they were in fact made at the end of the plaintiff's evidence, at the end of the case.

The plaintiff objected to each and every part of the motion, and is deemed to have made any argument that they choose to make at any time that the motion might be reviewed, so there has been no waiver.
I don't think - is there anything else we have to clean up.

MR. SHAPIRO:

I want to comment on that, Your Honor. I remember when counsel made the motion to at the close of the plaintiff's case but I don't recall the motion being reasserted at the close of all the evidence at all. You are entirely right, there was no argument taken at any time, pro or con, but I don't recall that motion being reasserted at the close of - at the close of all the evidence.

THE COURT:

Well, I don't think - the record will not reflect that it was made on the record at the close of all the evidence. My understanding was I was preserving everybody's rights and everybody understood it with regard to all of these motions because we were motion anxious to do what we had done and I do not thinking. You certainly haven't waived any objection to it. I think they haven't waived whatever points they are making on the motions, and the motions were in fact to the extent it was granted, it was granted. To the extent it was denied it was denied. So I mean do you want to say anything Ms. Jeandheur my

understanding is that the government just as with the instructions I was making sure that the record is going to be protected with regard to everybody's position. The same thing with regard to the motions.

MS. JEANDHEUR:

That was my understanding that we had not waived and that you were treating the motion as though it had been reasserted, yes, Your Honor.

THE COURT:

That's my understanding. I think that everybody relied - certainly not - I did not want this - I did not want to take the time for the argument and if we get into the argument, once the plaintiff starts opposing something, they are perfectly entitled to put on the record all the arguments for fear of some kind of waiver. I did not want that to happen. I wanted to make sure that whatever argument could be made is preserved and that's where we are. That's for the record. I mean, that was my understanding and I think that's where we are. Now let's talk about tomorrow. If we can.

Transcript of June 21, 2001 at 258-261.

Second, the grounds presented by Defendant for a Judgme as a Matter of Law were essentially the same as those presented in h Motion for Summary Judgment. There is no doubt that Plaintiff w well aware of, and had ample opportunity to address, the argumen relied upon by Defendant in seeking Judgment as a Matter of Law

In sum, the Court concludes that there was no waive Accordingly, Defendant's post-trial Motion for Judgment as a Matt of Law is properly before the Court.

2. The Effect of Any Waiver

In the event that an appellate court should disagree wi regard to the waiver issue, it is appropriate to consider t consequences of such a waiver.

It appears that if there had been a waiver of the Judgment a Matter of Law motion, and if the Defendant would, but for t waiver, be entitled to Judgment as a Matter of Law, the Court wou have the discretion to grant Defendant's motion for new trial on t issues as to which JMOL had been barred by waiver. (Hearing Tr at 6-10.) However, in subsequent proceedings, Plaintiff would ha an opportunity to present additional evidence to avoid summa judgment or Judgment as a Matter of Law at a second trial. (Hearin Tr. at 7-8.) Therefore, a waiver of the Defendant's ability to move f Judgment as a Matter of Law at the conclusion of the trial would n bar a future grant of . summary judgment on a record including t trial proceedings together with any additional evidence that may b

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[2] Reference to "Hearing Tr." refers to the transcript argument on the instant motions held December 2, 2002.

submitted.

B. Legal Standards

1. Judgment as a Matter of Law

As expressed by the United States Court of Appeals for the Fifth Circuit in Mozingo v. Correct Mfg. Corp., 752 F.2d 168, 176 (5th Cir. 1985):

> The standard of review used to determine whether a grant or denial of a directed verdict was proper is whether, considering all of the evidence in the light and with all reasonable inferences most favorable to the party opposed to the motion, there is evidence of such quality and weight that reasonable and fair-minded men in the exercise of impartial judgment might reach different conclusions. If this evidence is present, then the case should go to the jury. E.g., Gross v. Black & Decker, Inc., 695 F.2d 858, 864 (5th Cir. 1983

The Fifth Circuit further articulated this standard in U.S. for Use and Benefit of Weyerhaeuser Co. v. Bucon Construction Co. Inc., 430 F.2d 420, 423 (5th Cir. 1970):

> In passing on motion for directed verdict, or judgment n.o.v. (now referred to as a motion for judgment as a

matter of law], the court does not exercise discretion but decides a pure question of law, that is, whether the evidence, considered in the light most favorable to the party against whom the motion was directed, affords substantial support for a verdict in his favor. Glazer v. Glazer, 374 F.2d 390, 400 (5th Cir. 1967); McGivern v. Northern Pac. Ry. Co., 132 F.2d 213, 216 (6th Cir. 1942); Hinton v. Dixie Ohio Exp. Co., 188 F.2d 121, 124 (6th Cir. 1951) ; United States v. Hartley, 99 F.2d 923, 925 (9th Cir. 1938) ; Aetna Casualty & Surety Co. v. Yeatts, 122 F.2d 350, 354 (4th Cir. 1941); Cater v. Gordon Transport, Inc., 390 F.2d 44, 46 (5th Cir. 1968).

2. New Trial

There is a different, and in a sense "lower," standa applicable to the motion for a new trial under Rule 59 of the Feder Rules of Civil Procedure. When considering a motion for a new tri the judge may take into account his evaluation of the weight of t evidence produced by the respective parties. U.S. for Use and Bene of Weyerhaeuser Co. v. Bucon Construction Co., Inc., 430 F.2d 42 423 (5th Cir. 1970). As stated long ago by the United States Court Appeals for the Fifth Circuit:

> A motion for new trial is addressed to the trial judge's discretion. He may grant a new. trial if he thinks he has committed error; and he may grant one (and he alone can) because he thinks the verdict is wrong, though supported by some evidence. The exercise of his discretion is not ordinarily reviewable

> on appeal, though a failure to exercise discretion, or an abuse of it, may be corrected.

Marsh v. Illinois Cent. R. Co., 175 F.2d 498, 500 (5th Cir. 1949)

C. Discussion

1. Judgment as a Matter of Law - Hostile Workplace Environment

The Court instructed the Jury regarding Plaintiff's hostile workplace environment claims without objection relevant to the instant motion.[3] The Court stated, in pertinent part:

> To establish her gender based hostile work environment claim, Ms. Skeldon must prove the follow[ing]: 1, that the defendant created a hostile or abusive working environment that was sufficiently severe or pervasive to alter the terms, conditions, or privileges of plaintiff's employment; and 2, that the alleged discriminatory treatment would not have occurred but for her gender.
>
> * * *
>
> As to whether or not the alleged conduct was sufficiently

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[3] Hearing Tr. 13.

severe or pervasive to alter the terms, conditions, or privileges of Ms. Skeldon's employment, you or course must first find that she herself found the conditions to be that way; but that is not the end of the inquiry. You must also find that the alleged harassment was sufficiently sever or pervasive to alter the terms, conditions, or privileges of employment and create a working environment that a reasonable person would find hostile or abusive.

* * *

In this case, plaintiff alleges that her psychological well-being was seriously affected by the alleged harassing behavior, and that her opportunity to succeed in the workplace was destroyed. If proven, either of these could be considered terms, conditions, or privileges of employment.

Therefore, you must determine whether Ms. Skeldon's work environment was so hostile or abusive as to affect seriously her psychological well-being. And you must also decide whether Ms. Skeldon's work environment was so hostile or abusive

as to destroy her opportunity to succeed in the workplace.

If you find that Ms. Skeldon's workplace was permeated by conduct that was sufficiently severe or pervasive, to alter the terms, conditions, or privileges of her employment, as I have defined these terms, you must then determine whether the defendant's conduct was based upon the fact that Ms. Skeldon is a woman.

This means that Ms. Skeldon must establish that the objectively offensive conduct would not have occurred but for the fact that she is female.

* * *

Let me also state that in this case you may consider whether Ms. Skeldon was treated differently than similarly situated male employees in similar circumstances.

Tr. of Trial Proceedings, June 21, 2001, 208-211.

The jury found for Plaintiff on her hostile workplace environment claim based upon the foregoing instructions. Defendant now seeks Judgment as a Matter of Law.

On Defendant's Motion for Summary Judgment this Cou ruled for the Plaintiff with regard to her hostile work environme claim. The Court held that Plaintiff's evidence was sufficient create genuine issues of material fact as whether she was subject harassment, whether the harassment was gender based and wheth the harassment impacted a term, condition or privilege of h employment. See Memorandum and Order of April 25, 2001 at 27 34.

The Plaintiff's evidence at trial was, as pertinent to th Defendant's right to JMOL, substantially the same as that presente in the summary judgment context. As noted above, when considerin a motion for JMOL the district court should not engage in fact findin but must determine whether the evidence viewed in the mo favorable light for Plaintiff could support a verdict for her.

If called upon to rule on the Defendant's JMOL motio without having previously ruled on the summary judgment motio this Court likely would grant JMOL to Defendant. However, such ruling would, inevitably, raise the question as to whether the chang in the Court's decision was based upon a credibility determinatio that would not be appropriate for JMOL purposes. This Cou concludes that it must follow its decision in the summary judgme context in the absence of any substantial difference between th issues presented on summary judgment and the issues now presente

Accordingly while denying Defendant JMOL, this Cou recommends that the Defendant appeal from the denial of JMOL t an appellate court that will determine the adequacy of Plaintiff's proo de novo.

2. New Trial

As discussed above, the Court has denied the Defendant Judgment as a Matter of Law but notes a close question as to whether the United States Court of Appeals for the Fifth Circuit will find the evidence adequate to support the verdict for Plaintiff. Should the Defendant appeal from the denial of Judgment as a Matter of Law, it appears that the appellate court may reach one of three conclusions:

- That Plaintiff's evidence was sufficient and affirm,
- That Plaintiff's evidence was insufficient, that the Judgment as a Matter of Law motion was not waived and remand for entry of Judgment for Defendant, or
- That Plaintiff's evidence was insufficient but that the Judgment as a Matter of Law motion was waived.

The Court will address the new trial motion in light of these three possibilities.

If the Plaintiff's evidence was adequate to establish a hostile workplace environment claim as defined by the instructions, the Court would deny the new trial motion. The Court does not find the verdict to be against "the clear weight" of the evidence or based upon false evidence[4] so as to justify a substitution of judicial fact finding

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[4] The Court finds that Plaintiff presented "false evidence" including part of her own testimony. Nevertheless, it was possible for the jury to evaluate the evidence as a whole and

for the jury verdict. Nor would there be a miscarriage of justic should judgment be based upon the verdict if, as is now assumed, th evidence is sufficient for Plaintiff to avoid Judgment as a Matter o Law.

Should the appellate court hold that Plaintiff's evidence wa insufficient and that the Judgment as a Matter of Law motion was no waived, there would be no need to consider a possible new trial Judgment would be entered for Defendant.

Should the appellate court hold that Plaintiff's evidence wa insufficient but that the Judgment as a Matter of Law motion has bee waived, this Court would exercise its discretion to grant Defendant a new trial. In that circumstance, to enter judgment based upon a jur verdict unsupported by sufficient evidence would constitute a miscarriage of justice.

Accordingly, the Court shall deny Defendant a new tria without prejudice to Defendant's ability to seek a new trial should th case be appealed and remanded. Should the appellate Court fin Plaintiff's evidence insufficient but Defendant's ability to obtai Judgment as a Matter of Law waived, the Court would grant a ne trial.

To summarize the situation in the event of an appeal:

- Should the appellate court reverse this Court' denial of JMOL to Defendant, judgmen would be entered for Defendant.

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find for Plaintiff on one of the two claims presented for verdict despite her false testimony.

- Should the appellate court affirm this Court's denial of JMOL to Defendant on the merits, this Court would deny the new trial motion.

- Should the appellate court affirm this Court's denial of JMOL*to Defendant on the ground that Defendant waived his right to move for JMOL, this Court would grant the new trial motion.

III. EQUITABLE RELIEF

Plaintiff seeks the following categories of equitable relief:

1. Psychiatric Therapy Expenses
2. Annual Merit Increases
3. Post Employment Uncompensated Time
4. Annual and Sick Leave
5. Correction of Records
6. Injunctive Relief
7. Attorney's Fees and Costs

In deciding the extent to which to grant equitable relief, the Court must make its own findings of fact subject, of course, to the binding effect of the jury verdict. Accordingly, pursuant to the instructions, the jury has found the following which are accepted as facts by the Court:

- The Defendant created a hostile or abusive work environment that was sufficiently severe to alter the terms, conditions or privileges of Plaintiff's employment and,

- The discriminatory treatment would not hav occurred but for her gender.

Therefore, the Court's findings are made upon its evaluatio of the evidence, bearing in mind those facts established by the jur verdict.

A. Psychiatric Therapy Expenses

Plaintiff seeks an award of some $45,000.00 as compensatio for past and anticipated future medical (psychiatric therapy) expense caused by Defendant's creation of a hostile work environment.

Defendant initially contends that the instant award i foreclosed because it should have been included in the jury's awar for immaterial pain and suffering. Therefore, according to Defendan the jury award of $45,000.000 precludes any judicial award o equitable relief for psychiatric therapy expenses. The the Court doe not agree.

The Court instructed the jury, without objections:

> Please note that in this case there is no claim made for what may be called economic damages, that is damages for such things as loss of any income or the incurring of any expenses of any kind.
>
> What Plaintiff does claim is that a result of gender based hostile work environment harassment and

> retaliation she has suffered emotional pain and suffering due to humiliation and stress, mental anguish, career damage, loss of enjoyment of life.

Tr. of Trial Proceedings, June 21, 2001 at 218.

Therefore, the jury was instructed not to include in its award any amount for "expenses of any kind." Accordingly, the verdict awarding $45,000.00 for emotional pain and suffering would not have included any award for past or future psychiatric therapy expenses. Thus, the Court must decide whether Plaintiff has proven entitlement to such an award.

The Court finds that Plaintiff has not proven, by a preponderance of the evidence that the hostile work environment was a proximate cause of any past or future expenses for psychiatric therapy. Plaintiff had a serious pre-existing condition that would have required past and future psychiatric therapy without regard to any hostile work environment. The Court finds that Plaintiff has failed to prove that the hostile work environment increased her past and future psychiatric therapy expenses over the amount of such expense had Defendant not committed the tortious acts at issue.

There shall be no award for past or future psychiatric therapy expenses.

B. Annual Merit Increases

To the extent that Plaintiff's claims for damages based on loss

of merit increases was not rejected on summary judgment[5] it would be rejected now. Plaintiff has not proven that she failed to receive any merit increases by virtue of gender-based discrimination. Skeldon presented employment problems that amply justified any management decision that she did not deserve merit increases.

C. Post Employment Uncompensated Time

Plaintiff seeks an award equal to some 295 or 335 hours of pay at her current salary for participation in the instant litigation. The Defendant agrees that there should be an award, but disputes the amount claimed by Plaintiff.

The Plaintiff has not presented evidence persuading the Court to accept her estimate of 295 or 335 hours. The Court does find, however, that Plaintiff as a partially prevailing party would be entitled to some award for the number of hours of employment time necessarily missed[6] by virtue of participated as a client in the instant litigation. The Court, based upon its evaluation of the evidence submitted in this regard - including its own observations and experience - makes the following estimates with regard to the time for which Plaintiff shall receive compensation:

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[5] See Memorandum and Order issued April 25, 2001 at 21-22.

[6] The instant award is not compensation for the time devoted by Plaintiff to the case but, instead, the employment time missed due to Plaintiff's participation in the case as a client. Accordingly, of course, time spent on weekends and outside of normal working hours that did not result in missed employment time are not here considered.

Three weeks of trial	120 hours
Pretrial preparation	40 hours
Other	40 hours

The Court, therefore, concludes that Plaintiff shall receive equitable relief in the form of compensation for 200 hours of employment time missed due to case participation.

Plaintiff has stated that she wishes either a financial award or an Order obligating "the government to credit plaintiff with this amount of annual leave which her current employer - Department of Health and Human Services -- would then -- be obligated to provide her." Plaintiff's Supplement Filing Regarding the Leave Re-crediting Aspects of Equitable Relief at 2. The Court will adopt the latter option.

D. Annual and Sick Leave

Plaintiff seeks an award to compensate her for annual and sick leave taken as a consequence of the hostile work environment and/or in connection with her participation in the instant litigation.

The Court finds that Plaintiff has not proven that her taking any annual or sick leave was caused by the hostile work environment. As discussed above, Plaintiff had a serious pre existing condition and has not proven, by a preponderance of the evidence, that the hostile work environment caused any ascertainable increase in her need for annual or sick leave.

Any award for Plaintiff's loss of working time due to her participation in the instant litigation has been taken into account in the award for past employment uncompensated time.

E. "Correction" of Records

Plaintiff seeks to have the Court order the Defendant t "correct" the Government's records

> so that the Justice Department will not hold these incidents and treatment against her, and the conduct and the proposed removal shall be nullified and it shan't be used by them in the future for either suitability or qualification.

Hearing Tr. 87.

The Court finds it most inappropriate to "correct" the record as Plaintiff seeks. Indeed, such "corrections" would create a fals impression of the Plaintiff by expunging information that shoul properly be present in the records.

The fact that Skeldon has been found to be a victim of hostile work environment does not change the fact that she was a unsatisfactory employee who never should have been hired as a Assistant United States Attorney in the first place.

F. Injunctive Relief

Plaintiff seeks to have the Court order the Government not t consider the proposal to fire, presumably in considering whether t hire Plaintiff again. The Court will not issue such an Order.

The Government, and in particular any United States Attorne who may be considering hiring Skeldon, should make a decision bas

upon a full set of facts.

G. Attorney's Fees and Costs

As discussed herein, the Court has decided not to award Plaintiff any amount for legal fees and costs even though, albeit subject to appellate review that may reverse this Court's denial of JMOL to Defendant[7], she received a favorable verdict on one of the claims she presented in the instant case. There are several grounds for the denial of legal fees, any one of which alone would be sufficient.

Plaintiff's fee demand was so outrageously excessive that it shocked the conscience of the Court. Moreover, the petition and submission therewith did not, by any stretch, adequately provide guidance to the Court in identifying that which should, and should not be allowed. As stated by the United States Court of Appeals for the Fifth Circuit:

> Other circuits have held that "a district court may, in its discretion, deny a request for attorneys' fees in its entirety when the request, submitted pursuant to 42 U.S.C. 1988, is so excessive it 'shock[s] the conscience of the court.' We find the *reasoning* of the Seventh Circuit particularly persuasive in this context: If, as appellant argues, the court were

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[7] Of course, "when parties who prevailed at trial lose on appeal, they cease to be entitled to attorneys' fees. . ." Fiaa v. Schroeder, 312 F.3d 625, 645 (4th Cir. 2002).

> required to award a reasonable fee when an outrageously unreasonable one has been asked for, claimants would be encouraged to make unreasonable demands, knowing that the only unfavorable conseque:Sce of such conduct would be reduction of their fee to what they should have asked for in the first place. To discourage such greed a severer reaction is needful. [Quoting from Brown v. Stackler, 612 F.2d 1057, 1059 (7th Cir.1980).

Scham v. District Courts Trying Criminal Cases, 148 F.3d 554, 557-58(5th Cir 1998). See also Fair Housing Council of Greate Washington v, Landow, 999 F.3d 92, 97-99 (4th Cir. 1993) ("[B]ecause [Plaintiff's] fee petition completely ignored th[e] principles [of requesting reasonable fees and providing the necessary assistance to determine the amount], we think the district court would not have abused its discretion by denying the [Plaintiff's $604,113] fee request in its entirety."); Sun Publishing Co., Inc. v. Mecklenburg News, Inc., 823 F.2d 818, 819 (4th Cir. 1987) ("[A] request for attorney's fees which is so exorbitant as to Shock the conscience of the court may be denied without a [detailed analysis]").

Furthermore, as discussed below, the Court finds that Plaintiff's false testimony and actions in the course of discovery warrant the sanction of a denial of an award of legal fees and costs.

Moreover, the Plaintiff prevailed. on only one of the several claims she made in the course of this litigation. Indeed, on the only two claims submitted for jury verdict, Plaintiff prevailed on one and

the Government prevailed on the other. In the instant case, with the Court finding that Plaintiff presented. false testimony in the course of discovery and at trial, the Court finds Plaintiff no more entitled to an award of legal fees than Defendant. Hence, the Court would make no such award to either side.

Finally, the Court will address the possibility that an appellate court might hold that the Court must make an award of legal fees and costs. If so, the Court would award the amount of $93,620.00[8] offset by an award of $8,544.79 to the Defendant for the costs incurred in additional discovery caused by Plaintiffs' misconduct. Thus, if directed to render an award by the appellate court, this Court would award a total of $85,075.21.

IV. SANCTIONS

The Court makes the factual finding that in the course of discovery, Plaintiff Skeldon testified falsely about her psychiatric history and records relating thereto. The finding is based upon the Court's evaluation of the evidence presented, including, but not limited to, the testimony of Plaintiff in connection with sanctions issues. The Court has considered that the jury returned a verdict for Plaintiff on one of her claims. Nevertheless, this verdict did not foreclose the Court's making its own credibility findings on the issues presented with regard to sanctions.

The Court finds it appropriate, indeed necessary, to impose sanctions. A litigant, especially an attorney, simply cannot testify falsely as to material matters without consequences.

If an appellate court should hold that the Court had discretion

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[8] The amount proposed by the Defendant.

to do so, the Court would enter judgment for the Defendant an eliminate any recovery by the Plaintiff. The Court assumes, howeve that it is required to impose a lesser sanction.

In the instant case, the Court determines that the appropriat sanction to impose on Plaintiff for her false testimony and conduct i regard to discovery is to deny her any recovery of legal fees and costs

V. CONCLUSION

For the foregoing reasons:

1. Defendant's Motion for Judgment as a Matte of Law is DENIED.

2. Defendant's Motion for a Partial New Trial i DENIED.

3. Plaintiff's Petition for an Award of Equitable Relief is GRANTED IN PART.

   a. The Defendant shall be required t take all steps necessary, including (i necessary) seeking a further Order o the Court addressed to another agency to cause Plaintiff's current employer t credit her with 200 hours of annua leave.

   b. Plaintiff shall be granted no othe equitable relief.

4. Defendant's Motion for Sanctions i

GRANTED.

5. Judgment shall be entered by separate Order.

SO ORDERED this 17th day of March, 2003.

Marvin J. Garbis
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
(Lafayette-Opelousas Division)

SABRINA A. SKELDON	*	
Plaintiff	*	
v.	*	C.A. No. 99-1177-LO
JOHN D. ASHCROFT, Attorney General of the United States	*	Judge Garbis (By Designation
Defendant	*	

* * * * * * * * *

JUDGMENT

This action came on for trial before the Court and a jury Honorable Marvin J. Garbis, United States District Judge presiding After the presentation of evidence, argument, and the Court's charge to the jury, a Special Verdict Form was submitted to the jury for their consideration; and a verdict was duly rendered. Thereafter, post trial motions were presented and have been ruled upon.

Accordingly:

- Judgment shall be, and hereby is, entered in favor of Plaintiff Sabrina A. Skeldon against Defendant John D. Ashcroft, Attorney general of the United States in the amount of $45,000 with interest as provided by

law, the parties to bear their own respective costs.

2. The Defendant shall take all steps necessary[9] to cause the Department of Health and Human Services to credit Plaintiff with 200 hours of annual leave as compensation for employment time missed due to participation in the instant case.

3. Any and all prior rulings disposing of any claims against any parties are incorporated by reference herein.

4. This Order shall be deemed to be a final judgment within the meaning of Rule 58 of the Federal Rules of Civil Procedure.

SO ORDERED this 17th day of March, 2003.

Marvin J. Garbis
United States District Judge

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[9] Which may include seeking supplement Orders from this Court.